

# EXHIBIT A

**Lichtman, Jason L.**

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**From:** Lichtman, Jason L.  
**Sent:** Wednesday, November 25, 2015 12:14 PM  
**To:** Carey, Colleen M.; Cuthbertson, Douglas I.  
**Cc:** Birnbaum, Timothy; Harkins, Daniel  
**Subject:** RE: Dover et al: Meet and Confer Request

Hi Colleen --

Thank you for your e-mail. I had assumed you intended to request a response within one day, and you sent your e-mail just before midnight. We don't think a request that we respond to an e-mail within a few business hours is constructive--you have my cell phone (and I believe Doug's as well--we are happy to send to you if not), and you are always welcome to call either of us with anything that is urgent.

As I explained in my e-mail this morning, we agree to all reasonable requests. We will produce any previously unproduced documents responsive to the below request today if BA will agree not to file any further expert reports in this matter; i.e., we would produce these documents so that BA can use them for cross-examination to the extent any cross-examination is otherwise appropriate or relevant. We would stress, however, that we do not believe that any such cross-examination is appropriate or relevant in part because we have asked the Court not to consider any expert testimony provided after September 29, 2015 and in part because Plaintiffs believe that BA should pay any fees or costs associated with such cross-examination.

I am happy to talk with you about this if you have any questions.

Regards,

- Jason

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From: Carey, Colleen M. [colleen.carey@dlapiper.com]  
Sent: Wednesday, November 25, 2015 10:31 AM  
To: Lichtman, Jason L.; Cuthbertson, Douglas I.  
Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: RE: Dover et al: Meet and Confer Request

Jason:

Just to clarify, I am not sure if you noticed when I sent my email, but it was sent yesterday. As such, BA would like a response from the plaintiffs today (not on Thanksgiving). If you are out of the office, perhaps another member of your team can respond.

Thanks,

Colleen Carey  
Associate

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-----Original Message-----

From: Lichtman, Jason L. [mailto:jlichtman@lchb.com]  
Sent: Wednesday, November 25, 2015 8:40 AM  
To: Carey, Colleen M.; Cuthbertson, Douglas I.  
Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: RE: Dover et al: Meet and Confer Request

Hi Colleen --

I am out of the office today for the Thanksgiving holiday, but am happy to talk with you on Monday when I am back. We'll of course agree to all reasonable requests.

If there is some type of exigency here that we are not seeing--and we gather BA may see one based on its request that we respond to an e-mail by noon on Thanksgiving day--you are of course welcome to call me on my cell phone Friday or even tomorrow.

Regards,

- Jason

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From: Carey, Colleen M. [colleen.carey@dlapiper.com]  
Sent: Tuesday, November 24, 2015 11:43 PM  
To: Lichtman, Jason L.; Cuthbertson, Douglas I.  
Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: RE: Dover et al: Meet and Confer Request

Jason:

BA requests that the plaintiffs provide the assumptions made, data, backup and sources relied upon from Dr. Engle's report. In addition, BA requests copies of Dr. Engle's engagement letter and his bills. Please notify us by noon tomorrow whether you will provide this information and, if so, the date upon which BA can expect to receive the production.

Regards,

Colleen Carey  
Associate

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From: Lichtman, Jason L. [mailto:jlichtman@lchb.com]  
Sent: Monday, November 23, 2015 6:51 PM  
To: Carey, Colleen M.; Cuthbertson, Douglas I.  
Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: RE: Dover et al: Meet and Confer Request

Hi Colleen -

Thank you for your e-mail. As we mentioned on the phone, expense is only one of the reasons that we do not consent to a deposition of Professor Engle. We simply do not believe the unique circumstances at issue here support such a deposition.

Regards,

- Jason

From: Carey, Colleen M. [mailto:colleen.carey@dlapiper.com]<mailto:[mailto:colleen.carey@dlapiper.com]>  
Sent: Monday, November 23, 2015 6:19 PM  
To: Lichtman, Jason L.; Cuthbertson, Douglas I.  
Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: RE: Dover et al: Meet and Confer Request

Jason and Doug:

As I mentioned in our call, we have not yet filed a motion. We notified the Court that we may be filing a motion (as reflected in the letter). In relation to the meet and confer regarding BA's proposed sanctions motion, we discussed the following:

\* You informed us that you do not agree that BA has the right to depose Dr. Engle (due to a concern about expenses), to submit a rebuttal expert report from Dr. Hildreth addressing Dr. Engle's report, or to submit a sur-reply to the Hildreth Daubert motion.

\* You clarified that the plaintiffs consider Dr. Engle to be a non-testifying expert because you do not plan to have him testify to a jury. When I inquired as to whether you believed that the rules permit a party to designate an expert to provide testimony solely for other phases of the case, you responded that you did not agree, but it was appropriate in the particular circumstances we have here. When asked what those particular circumstances are, you responded that the plaintiffs had outlined them in the Hildreth reply.

\* You also informed us that while the plaintiffs do not have the present intention to seek to designate Dr. Engle as an expert if your Hildreth Daubert motion is denied, you reserve the right to revisit the question depending on the Court's ruling on BA's motion for sanctions.

\* You informed us that the plaintiffs' oppose any attempt to alter the deadline for BA's summary judgment motion, the trial date or any dates in between.

Regards,

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From: Lichtman, Jason L. [mailto:jlichtman@lchb.com]  
Sent: Monday, November 23, 2015 5:51 PM  
To: Carey, Colleen M.; Cuthbertson, Douglas I.

Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: RE: Dover et al: Meet and Confer Request

Hi Colleen -

Notwithstanding that you filed a motion without speaking with us a few minutes ago, we will give you a call momentarily.

Regards,

- Jason

From: Carey, Colleen M. [mailto:colleen.carey@dlapiper.com]  
Sent: Monday, November 23, 2015 5:44 PM  
To: Lichtman, Jason L.; Cuthbertson, Douglas I.  
Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: RE: Dover et al: Meet and Confer Request

No one is answering your reception line so please call my office directly.

Thanks,

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From: Lichtman, Jason L. [mailto:jlichtman@lchb.com]  
Sent: Monday, November 23, 2015 5:41 PM  
To: Carey, Colleen M.; Cuthbertson, Douglas I.  
Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: RE: Dover et al: Meet and Confer Request

Hi Colleen -

Plaintiffs mean that they have not designated Professor Engle to offer jury testimony in this matter and have no present intention to make such a designation.

For this reason, we understand all of your questions to be moot. For example, we do not understand your request to file a Daubert motion against Professor Engle. Setting aside that we do not believe that BA would have a good faith basis to file such a motion, Daubert applies only to experts who testify to the jury.

Perhaps you could give Doug and me a call? We do not believe it is efficient to engage in a detailed letter writing campaign, but we are still in the office and of course happy to talk through any of your remaining questions with you.

Regards,

- Jason

From: Carey, Colleen M. [mailto:colleen.carey@dlapiper.com]  
Sent: Monday, November 23, 2015 5:32 PM

To: Lichtman, Jason L.; Cuthbertson, Douglas I.  
Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: RE: Dover et al: Meet and Confer Request

Jason:

To clarify, how do the plaintiffs believe Dr. Engle is not a testifying expert when you have provided his testimony to the Court by way of declaration in support of your Daubert motion? In addition, are you informing us that you will not call Dr. Engle at trial (or use him for class certification or summary judgment) if the Court denies your Daubert motion related to Dr. Hildreth and Dr. Hildreth is a witness?

In addition to these two questions, please answer the questions I originally posed in my email.

Thanks,

Colleen Carey  
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From: Lichtman, Jason L. [<mailto:jlichtman@lchb.com>]  
Sent: Monday, November 23, 2015 4:40 PM  
To: Carey, Colleen M.; Cuthbertson, Douglas I.  
Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: RE: Dover et al: Meet and Confer Request

Hi Colleen -

Thank you for your e-mail. That e-mail does surprise us, primarily because we have not designated Professor Engle as a testifying expert and have no plans to do so. We hope that this resolves your concerns-it seems to us to render all of them moot, although we of course are happy to speak with you about any remaining questions. Doug and I are both in the office today.

Regards,

- Jason

From: Carey, Colleen M. [<mailto:colleen.carey@dlapiper.com>]  
Sent: Monday, November 23, 2015 4:32 PM  
To: Cuthbertson, Douglas I.; Lichtman, Jason L.  
Cc: Birnbaum, Timothy; Harkins, Daniel  
Subject: Dover et al: Meet and Confer Request

Doug and Jason:

As I am sure you suspect, BA intends to move for sanctions for the plaintiffs' blatant violation of the Court's scheduling order in purporting to designate a new expert in its reply to the Hildreth Daubert motion. In compliance with our obligations, we are requesting that you meet and confer with us before we file the motion. In light of the prejudice BA is

already experiencing and the impending summary judgment deadline, BA requests the answers to the questions below no later than noon tomorrow.

- First, will the plaintiffs agree to withdraw this purported expert report? If not, 1. What is the plaintiffs' explanation for their failure to comply with the Court's scheduling order?
2. Will you agree to permit Dr. Hildreth to submit a supplemental report responding to Dr. Engle's report on approximately December 20, 2015?
  3. Will you agree to produce Dr. Engle for a deposition sometime in late January?
  4. Will you agree to schedule Daubert briefing related to Dr. Engle beginning in early February with similar deadlines to what we had previously?
  5. Will you agree to delay the deadline for BA's summary judgment motion from December 17, 2015, until 30 days after the completion of the Daubert briefing related to Dr. Engle?
  6. Will you agree that if the plaintiffs reference Dr. Engle's report in their upcoming reply to class certification, that BA will have the opportunity to file a sur-reply on December 17, 2015?
  7. Will you agree to pay BA's costs associated with Dr. Engle's deposition and/or the preparation of the responsive expert report?
  8. Will you agree that the trial date will be pushed back from June until no earlier than the fall?

Regards,

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